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STATE POLITICAL REORGANIZATION

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Among the many serious political and economic problems, with which the American democracy is confronted, there is none, in respect to which public opinion is more profoundly interested and more radically divided than in those connected with state political reorganization. More than ever before in the history of the country such problems are assuming national importance. The so-called progressive divisions of both parties are committed absolutely to the thoroughgoing alteration of state political institutions. They propose to substitute a more or less complete system of direct popular government for the more or less incomplete system of representative government, which prevailed throughout the nineteenth century. West of the Mississippi River one state after another has been adopting their program. Certain states in the Middle West and the East have begun or are preparing to follow the example. The advocates of the new system overflow with enthusiasm and optimistic conviction. The most completely reorganized state in the Far West is declared by one of its senators to possess the best system of popular government in the world to-day. He and his associates are expecting and planning to introduce the blessings of this superlatively excellent system of government, not only into the unregenerate states, but ultimately into the national political organization itself.

The opponents of the system of direct government are no less interested in it than are its friends, but they believe it to be superlatively bad rather than superlatively good. They class it as a political heresy, comparable to the economic heresies, which have so frequently appeared, flourished and decayed in the frontier states. It is condemned as revolutionary in its meaning and effect. It is supposed to undermine the very foundations of American constitutional representative democracy, and to violate all that is soundest and safest in the American political tradition. The system of direct government is expected to have its period of efflorescence, like Know-Nothingism, Grangerism,

and Populism, and then gradually to sink into utter and deserved oblivion.

However much a disinterested student of American political institutions may disagree with the rhapsodies of the friends of direct government, he is not obliged to accept the strictures of its opponents. There is one imposing reason why it cannot be dismissed as a bit of temporary political insanity. Obviously it is only a new phase of a process of modifying American state political institutions, which has prevailed since the beginning of American political independence. If the experiments of the last four generations in state political reorganization have had any specific tendency and meaning, they have tended towards and meant the group of local political institutions advocated by the "Progressives." Some system of direct legislation and some attempt to fasten a more complete responsibility on legislative and administrative officials is unquestionably the partial consummation of a century and a quarter of state constitutional legislation. So much must be admitted, no matter how explicitly we reserve the question whether or not it be a consummation devoutly to be wished.

The process of American state political reorganization may be comprehensively described as the progressive limitation of the powers of the state legislatures. When the colonies declared their independence of Great Britain, the legislatures of three quarters of them were legally omnipotent, and the way in which the power was used immediately created distrust and dissatisfaction. The work of curbing them began by making them subject to written constitutions, consisting fundamentally of bills of rights, which required for their acceptance and amendment the direct approval of a larger or smaller majority of the voters. A little later their power was still further circumscribed by the adoption of the Federal Constitution. Participation in some of the most momentous functions of government was thereby denied to them, and their action was subject in certain respects to the jurisdiction of the Federal Courts. Moreover the Federal Constitution itself embodied a political theory of checks and balances, which was but imperfectly realized in the fundamental law of some of the states. After its adoption state constitutions were altered in order to conform to the national model. The lower house was, wherever necessary, checked by a smaller upper house elected for a longer term. The executive and the judiciary were little by little emancipated from legislative control and received their authority as a rule directly from

the people. At about the same time a decision from the Supreme Court broadened the judicial veto over state legislation, and by so doing prepared for what was to become perhaps the most effective and disheartening of all limitations upon legislative power.

The foregoing checks upon the state legislatures were all introduced and developed by men who were suspicious of popular government; but the next enemy of the state legislatures proved to be the new American democracy. The Jacksonian Democrats in their attempt to make popular government effective dealt the legislature a body blow. They placed more confidence in the executive than in the legislature as the embodiment of the popular will. Under their influence the executive veto upon legislation was renewed and strengthened. The power of the legislative caucus over nominations was destroyed, and an attempt was made to secure an effective popular government by improving partizan machinery and by increasing partizan responsibility. The legislature began to take its orders from the partizan organization dominant in its state.

Neither the quality of legislative membership, nor the character of its output was improved by these accumulating prohibitions and checks. Political reformers, in no wise discouraged, continued patiently to tighten the bonds. If legislatures went wrong, an easy way of keeping them straight was to diminish the possibility of statutory aberration by increasing the scope of constitutional legislation. Constitutions began to increase in length. Many details formerly left to legislative discretion were specified in the fundamental law. The method whereby a legislature should deal with matters left to its discretion was prescribed. Special legislation was usually forbidden, and a more detailed definition of legislative procedure was imposed. In spite, however, of these attempts to take away with one hand a power which was given with the other, the legislative output began after the Civil War to increase with great rapidity and without any improvement in quality. In this emergency, another still more effective remedy was employed. In order to perfect a government by law, which was none the less a government in which laws and law-makers were presumptively suspect, the hitherto neglected power of the courts to declare laws null, was invoked and received an unprecedented development. The increasing detail of the state constitutions and the 14th amendment to the Federal Constitution had narrowed the path of constitutional rectitude. Along this path were stationed the judges, wielding a pen which was mightier

than the sword. Within a few years the rocks below the legislative trail became ghastly white with the tatters of statutory vagrants. Nor was this all. As a last resort certain states, not content with the foregoing accumulation of automatic and personal supervision, threw up their hands and forbade their legislatures to meet more than once every two or four years and then for a strictly limited period. The earlier omnipotent legislature, the source in other countries of all regulation, had become the most completely regulated body in the community.

An alien and unsympathetic spectator of this process might well have imagined that the American states were possessed of a malady, which compelled them to vomit legislation, and which left them disgusted with the fruits of their own ailment. They had sought apparently in good faith to improve the quality of the legislative output by checking the legislature in every conceivable way, and by balancing legislative activity with the executive and judicial vetoes. They had succeeded so well in establishing a system of checks that the state legislative power became a sort of tread-mill, which continually went around at a considerable expense but which rarely went forward. As for the balance of the system, the less said about it the better. It may fairly be compared to the balance characteristic of a jelly fish or of a bed of clay.

During the past decade a decided change has taken place in the public attitude, not towards the state legislatures, but towards state legislation. The former disposition to prevent special and undesirable legislation has been superseded by a disposition to use legislation for the sake of effecting certain desirable economic and social reforms. In many states these reforms have been accomplished by the agency of the despised legislatures; but the checks which have been imposed on legislative action, and the continued subjection of many legislatures to the party machines and to the "special interests," immediately created a demand for some quicker and more certain machinery of accomplishing the popular will. There was an obvious way of creating such a machinery, which harmonized with the spirit of four generations of state political reorganization. The one positive element in the whole process of reorganization had been the gradual increase of direct popular legislation by virtue of constitutional enactments. The reforms which the legislatures either could not, or could not be trusted to, accomplish must be authorized by direct popular vote, the result being a virtual abolition of the distinction in certain states between statutes and constitutional laws. Such direct legislation would not be subject

either to state constitutional prohibitions or to executive and judicial vetoes. The popular will would receive immediate and authentic expression—subject only to the checks imposed by the Federal Constitution and Courts.

Thus the system of prohibitions imposed upon state legislation by four generations of experiment are being swept away, while at the same time the new legislative machinery is unquestionably a partial consummation of the system it is destroying. The only possible result of the systematic degradation of American legislatures was their supersession, as soon as there appeared an emphatic demand for legislation in the popular interest. The people of the western states may be making a mistake in seeking to substitute direct for delegated government; but if so they are making a mistake in good company. They have been taught to consider their legislatures as necessarily corrupt and incompetent; and they are merely acting upon the lesson.

The element in American legal and political opinion, which condemns most emphatically the system of direct legislation is on the whole the same element, which in the past has done most to undermine legislative authority. The attempt to improve state legislatures and legislation by an elaborate system of checks, culminating in the judicial veto, has been on the whole the work of the American lawyer, who has wanted to set up a government by law and to do away with a government by men, and who proposed to make some kind of legal machinery instead of any body of men, judges excepted, responsible for good government. But their machinery was necessarily constitutional; and the ultimate makers of constitutional law in a democracy are not the judges but the people. When the people upon which their whole system rested began to move in a body, their superstructure of checks and balances crumbled to the ground; and except for the ruins there promises to be nothing left to hinder the unrestrained movement of the popular will.

Such being the general situation the attitude now assumed by the most irreconcilable opponents of direct government is the height of futility. How can they expect to prevent the spread of direct government by "standing-pat," by denunciations of the dangers of legislative "Populism" and by praise of the virtues of representative government. "The essential property of representative government," says Professor Dicey "is to produce co-incidence between the wishes of the Sovereign and the wishes of the subject." In this sense American state legislatures have never been considered representative by public opinion, and up to within ten years the better American lawyers were

precisely the men, who testified most emphatically to the unrepresentative character of American state representation. If they wish to preserve representative government in the American states, they must devise some means of making it representative. They must advance some alternative remedy for the maladies of American legislative practice and behavior.

So far as I know the opponents of direct government have never attempted to propose an alternative remedy. They are tending to assume the position, in defiance of the historical attitude of their forbears, that American state legislatures have after all really been representative. They have represented, it is said, the amount of intelligent discrimination and disinterested public spirit, which the average voter has brought to the election of legislative candidates and to the consideration of state policies. Special interests have prevailed in American state government, because they prevail in the life and purposes of the average voter. They will continue to prevail under any system of direct government, unless the state electorates exhibit more public spirit and intelligent discrimination than they have in the past; and if any such access of conscientious and intelligent voting occurs, it would obtain by means of a representative system a more complete expression than it would from any system of direct government.

Such a retort has some validity. Throughout the nineteenth century economic conditions in the United States encouraged the confusion of public and private interest. The whole country was straining towards the quickest possible agricultural and industrial expansion. The public interest, to be promoted by economic expansion, was conceived merely as a collection of individual and class interests. The dominant object of state legislation as the expression of the public interest was the satisfaction of these eager individual and class interests. They were either given a free hand or they were directly or indirectly subsidized. Not unnaturally they took advantage of their opportunities to govern the states unscrupulously and sometimes corruptly for their own benefit; and they were aided rather than hindered in so doing by the means ostensibly adopted to check them. The accumulating array of prohibitions, safeguards and divisions of authority and responsibility, which passed for American state government was admirably adapted to the cultivation of special political and economic interests and to the suppression of any but a very aggressive public interest.

Be it admitted that pioneer economic conditions account for a certain part of the American legislative malady. There remains the

equally persistent disgust which the results of this malady inspired. The state electorates have had aspirations as well as interests. They were vaguely conscious of a public interest, which was something more than and different from a mere collection of private and special interests. They supported the attempts made by constitutional reformers to give expression to the public interest by tying the hands of their perverted legislatures and by enlarging the constitutions; and if they are now taking the law into their own hands, it is not because they did not give to the other systems a fair trial. For generations they accepted the advice of the leaders, who sought to perfect a government by law, which would work automatically and dispense with any but a minimum of popular and individual responsibility. They did not reject it until its bankruptcy was notorious; and they cannot be blamed either for rejecting it now or for seizing in their reaction against it on the one engine it contained for the unhampered expression of the popular will.

The salutary aspect of the agitation in favor of direct legislation consists in its readiness to trust somebody with effective political responsibility. The old system trusted nobody. It deprived the executive of specially executive responsibility and failed sufficiently to recognize the necessarily close relation between administrative and legislative functions. The legislature was incarcerated in a straight-jacket, and was allowed a little occasional exercise only with the consent of the executive and the courts. The judges were partly incapacitated for their primary business of administering justice in order that they might be aggrandized as guardians of the constitution. Executives, legislatures and courts were all granted abundant power to prevent others from doing things, and very little to do anything themselves. But the root of the whole system was distrust of the people. The effective political expression of the popular will was delayed, diverted, checked, distrusted and discouraged in every possible way; so that just as soon as the state electorates came to have a united and aggressive purpose their natural instinct was to turn and rend their bonds. The watchword of the "Progressives," has become "trust in the people" and such a trust constitutes manifestly the only possible foundation on which a democracy can erect an enduring superstructure of political institutions.

The new state democracies are merely taking up the work, which was begun over eighty years ago by the Jacksonian Democracy and left unfinished. The pioneer democracy sought to create popular political institutions by means of manhood suffrage, the direct accountability of all officials to the electorate, and the substitution for the leadership of

a legislative caucus the leadership of a partizan machine. It succeeded in carrying through its immediate program, but its program failed to effect its ostensible objects. The new democracy is resuming the task, but not at the point at which the old democracy ceased. It seeks to undo in certain respects the work of its predecessor. It proposes to break up the system of party representation, leadership, and responsibility upon which the old democracy counted for the transaction of public business. It proposes, furthermore, to treat the legislative power very much as the old democracy treated the executive power. It proposes, that is, to take over the power of making important laws just as it formerly decided to take over the power of selecting all important officials. And just as it formerly assumed the power of selecting all important officials partly with the idea of strengthening the executive, so it is now assuming the power of making laws with the very evident intention and expectation of strengthening legislation.

Certain of the leaders of the new democracy admit, however, that their predecessors made a mistake in attempting to strengthen the executive by subdividing it and making its parts more directly responsible to the people. Effective executive responsibility was diminished rather than increased by this device; and the partizan responsibility, which was substituted for official responsibility, while partly effective in national politics, was entirely ineffective in state politics. But is not the new democracy in its attempt to strengthen legislation making a mistake analogous to that which the old democracy made in its treatment of the executive? The subdivision of the executive power diminished administrative responsibility, because the accountability of a large number of elected officials to their constituents could not in practice be enforced. The leaders of the new democracy, who are converted to a shorter ballot, should consider seriously whether the tendency of an unlimited initiative and referendum will not be to bring about a similar disintegration of the legislative power and in the end a similar laxity in its exercise.

The initiative is intended to give free expression to the interests and ideas of small popular groups, which in the past have not been able to obtain a fair hearing. Its effect in Oregon has been to submit to the electorate a great diversity of legislative proposals, for which public opinion may or may not be prepared and which may or may not receive any sufficient preliminary ventilation and discussion. These proposals may be and often are introduced by groups of individuals, who occupy no intimate or responsible relation to the state administration

or to the whole body of state public opinion. They merely want to push their own ideas or advance their own interests. The electors are required to accept or reject these proposals just as they stand; and the experience of Switzerland as well as Oregon indicates that the great majority of them are no more favorably received by the voters than they would be by a legislature. It is improbable that any reform has been accomplished by means of the initiative and referendum, which might not have been accomplished as well by some other means. In Switzerland direct government has frequently made slower and more difficult the enactment of desirable legislation. The voter is confused and made suspicious by being bombarded with a succession of radical or unfamiliar proposals; and in his confusion and impatience he usually votes "No." The conditions under which he could pass a wilful and intelligent judgment are in the majority of cases denied to him. In order to obtain such a judgment the utmost concentration of public attention and interest on a few salient proposals is necessary, just as a similar concentration of interest on a few salient ballots is a condition of a wise choice among alternative candidates for office.

In view of its practical inconveniences the unlimited initiative and referendum, in the form which it has obtained in the majority of "Progressive" states, is scarcely likely to endure. Obviously the cycle of transformation in state political institutions, of which direct government is the latest phase, has not been completed. A system of direct government is being experimentally superposed upon a system of misrepresentative government; and as yet neither the old nor the new system has been adapted to its proper functions and to its necessary relations to the other members of the governmental family. Responsibility for good government has been placed where it ultimately belongs, but it has not yet been provided with institutions, which permit of its effective redemption. Even those who believe that Oregon possesses the best government in the world today must regard with some misgivings the lingering remnants of the former misrepresentative system. All accounts agree that the mutilated legislature is performing very badly what remains of its work. It seems incapable of drawing properly the appropriation bills required for the ordinary transaction of state business. Under the circumstances the further deterioration of the legislature is most probable. Why any self-respecting man or useful public servant should want to be an official legislator in a state like Oregon is unimaginable. One of two results is likely to follow. Either the legislature in directly governed states will disappear, as it has

disappeared in directly governed cities, and be merged with some kind of executive council. Or if it is to be kept alive, it must be granted as in Switzerland a limited but effective power, to which a definite responsibility is attached; and some means must be taken to make it more representative of the diverse currents of popular opinion.

The impossible position of the legislative rump in a directly governed state is practically admitted by the People's Power League of Oregon, which has proposed certain additional constitutional changes designed to strengthen both the legislature and the executive. These proposals look in the direction of a more complete concentration of organized public power and consequently in the renewal to that extent of representative government. Any further modification of state political institutions must, indeed, look in some such direction. The process of distribution has been pushed to the limit. Any additional advance along that line would mean utter disorganization. The people have resumed their ultimate responsibility and most of the actual power. They are after a fashion really governing themselves; but in order to govern themselves they have to govern one another, and they have to provide some more effective machinery for that purpose.

Special interests have usually predominated in American state governments, because their constitutions have not provided for the expression of a public interest which was more than a collection of private and local interests. There has been no integrity of government, because there has been no sufficient unity of organization. The American state as a political type needs a particularly unified organization, because its citizens are never forced into joint action by the pressure of external dangers or by the necessity of asserting a collective interest in foreign affairs. The Federal Constitution protects them even against the worst consequences of internal disorder. Yet the organization of the American state has hampered in every possible way the expression of any prevailing collective public interest. In neither branch of the legislature has an attempt been made to secure the representation of any interests except local interests. The executive has been never granted its proper and natural function of giving effective expression to the will of the temporarily preponderant weight of public opinion. A governor could suggest legislation and he could usually veto it. In the case of an able and aggressive man, supported by a voluminous wave of public opinion, his power counted for much. But in forcing through a legislative program, he is straining his legal authority; and in order to hold his own as the political leader

of the state he is obliged to dissipate his time and energy in constant warfare with the political machines whose domination he is necessarily destroying. In case the state governments are to be consolidated, the executive as the head of the responsible administrative system and as the representative of the dominant mass of public opinion, necessarily becomes the center of the consolidated organization.

The progressive democracy is bound to be as much interested in efficient administration as it is in reconstructive legislation. "Progressive" legislation in all the states is leaving behind it a trail of public service commissions, conservation commissions and the like, and upon the excellence of their work the success of the progressive movement will to a very considerable extent depend. Its future as the expression of a permanent public interest is tied absolutely to an increase of executive authority and responsibility. It cannot get along without an adequate and efficient administrative organization—responsible to the governor, just as the governor is responsible to his constituents. And the administration itself cannot properly carry on its work, unless it is provided with some means of calling sharply to the attention of public opinion its requirements in the way of revised or supplementary legislation.

The practical political career of the new democracy and the logic of its legislative program both point in the direction of bestowing on the governor legislative initiative. His inevitable responsibilities to public opinion and to the business of government are such that his relation to legislation should become positive. He should have the power to introduce and advocate bills, which under the circumstances would necessarily be drawn with a lively sense of his responsibility to public opinion and to the needs of effective administration. These bills the legislature would have the power to accept or reject. But the veto power, possessed by the legislature would have a positive value, because it would, of course, be united with the power of amendment. The legislature's proper functions discussing testing and tempering legislation, would not only remain unimpaired, but would even be strengthened. Assuming it to be a body really representing the diverse opinions and interests of the electorate, it would have every disposition to criticize sharply and, if possible, to modify the administrative measures. The executive and the legislature would remain separate, but provision would be made for their mutual association and for the performance by each of its proper and suitable work. Of course the legislature might frequently either reject administration bills or amend

them in unacceptable ways; and in the event of such disagreements an appeal to the people would constitute the natural remedy. Bills submitted to popular vote as the result of a disagreement between the legislature and the governor would be likely to present a definite issue, which would be fully discussed, concentrate popular attention, and evoke the best results from the referendum.

One of the most doubtful questions, raised by any such increase of executive powers, would hang upon the difficulty of obtaining a legislature, which would want to criticize and test the administrative bills. Would not the preponderant element in public opinion which elected the governor provide him with the necessary convenience of a subservient legislative majority? It most assuredly would, unless adequate measures were taken to make the legislature represent, not public opinion as a whole, but public opinion in so far as it was divided by special interests and ideas into a group of minorities. The will of a temporary majority usually arouses the hostility of several minority interests in the community. Indeed, just in so far as the majority is one-sided, unfair or extreme, it is certain to arouse such opposition: and if any machinery can be created by securing the representation of such minorities the program of the governor would be sure to meet with the needed resistance. Such a machinery could be created by the adoption of a system of proportional representation. Let the state be separated into large but unequal districts, corresponding so far as possible with its salient economic subdivisions, and varying in the number of their representatives according to their population. Let the names of those representatives appear on the ballot without any partizan designation, and let them be chosen by means of the system known as the single transferable vote, which serves to secure the representation of minorities in proportion to their actual voting strength. In all probability such a machinery would create a legislative body with both the disposition and the ability to criticize effectively an administrative legislative program.

But what would become under the foregoing system of the popular initiative, referendum and the recall? They would all have a certain place. An executive possessed of such very considerable powers and elected as he should be for a comparatively long term, should most assuredly be subject to recall. He should be obliged to keep the confidence of the electorate just as the English ministry is obliged to retain the confidence of the House of Commons. The referendum would be frequently invoked as the result of resistance by the legislature to

the governor's program, and it could be furthermore made obligatory on certain classes of measures. A popular initiative in legislative proposals might be preserved, provided it was so limited as not to make the ballot of legislation too long or too trivial. If it could hold its own against the official initiative in legislation of a governor, representative of public opinion and the state administration, it would deserve whatever effectiveness it could retain. The people would not try to perform all the functions of government, but they would perform certain essential ones and they would absolutely control the remainder. They could not be betrayed—except with their own explicit, well-considered and reiterated consent.

No doubt a plan of state political reorganization framed along the foregoing lines has just at present no chance of securing effective popular support. It is subversive of some of the most time-honored of American political traditions, and it would excite as much opposition among the opponents of direct government as it would among the friends thereof. Public opinion in a democracy cannot assimilate too many new ideas at one time. For the present it is being fascinated by the notion of the popular exercise of legislative power; and before any consolidation of public authority can be brought about, the agitation in favor of direct government in its popular form must run its course and learn its lessons. The most that can be urged in favor of the availability of the general type of state political organization, which has just been sketched, is that it seeks to meet certain fundamental political needs, which have hitherto been largely ignored in our state political institutions, and which hereafter are bound to become more rather than less acute. Finally these needs are met in a manner which enables the popular will to be freely, efficiently and at the same time considerably expressed.

The prediction may be confidently advanced that eventually the need of consolidation in our own state political institutions will have to be faced. But the attempt to meet it will probably make very slow headway. An American electorate usually jumps at the opportunity of casting more votes, but it is loth either to believe that more votes do not mean more power or to surrender any vote, which it has once obtained. The reconstruction of a system of really representative government will never be accomplished, except by virtue of leadership very different from that which now characterizes the progressive democracy. Some of the most conspicuous of its leaders contrast direct with delegated government as if the two were necessarily opposed;

and one of the most conspicuous has worked up a preposterous theory that all representative government must be selfish and corrupt and all direct popular government disinterested and public spirited. This kind of leadership will never advocate any reform which does not tickle a popular prejudice, or against which a plausible popular outcry can be raised. It answers any expressed misgiving as the power of a popular vote to accomplish every worthy and necessary political object with the retort that the doubter does not trust the people. And it considers trust in a popular majority and in the average voter tantamount to an utter distrust in all minorities and in all exceptional individuals. Under captains of this kind the progressive democracy may win a great many elections; but they will contribute about as much to the beneficial reorganization of state political institutions and to the solution of the problems of the American people as did in its day the Jacksonian democracy. They will contribute institutions which in the name of democracy will dissipate and discredit popular rule, and which will become eventually the great obstacles to any genuine social and economic amelioration.